

MORGANTOWN BOARD OF ZONING APPEALS

MINUTES

April 20, 2005

6:30 P.M.

City Council Chambers

Members Present: Kevin Leyden, Bernie Bossio, Jim Rockis, and Mark Furfari.

Members Absent: Nick Iannone.

Staff Present: Jim Wood, Planning Director.

MATTERS OF BUSINESS:

Motion by B. Bossio, second by J. Rockis, to approve the minutes of March 18, 2005. Motion carried unanimously.

OLD BUSINESS: None.

NEW BUSINESS:

1. **V05-06 / Williams / 100 Third Street:** Request by Mike Williams for variance approval from the *Table 2, Residential Development Standards* for property located at 100 Third Street. Tax Map #20 Parcel #53; an M-U, Mixed Use District.
2. **V05-07 / Williams / 100 Third Street:** Request by Mike Williams for variance approval from the *Table 2, Residential Development Standards* for property located at 100 Third Street. Tax Map #19 Parcel #120; an R-3, Multi-Family Residential District.

J. Wood read the staff report stating that Mr. Williams would like variance approval for two pieces of property located at 100 Third Street. At the April 2005 meeting, the Planning Commission approved a minor boundary adjustment for these two parcels to enable them to have enough land to support two proposed multi-family structures (a ten unit building on one parcel and an eleven unit building on the other).

J. Wood explained that Parcel #120 now contains 10,510.73 square feet. The applicant is proposing to build a 10-unit apartment building with five 1-bedroom and five 3-bedroom units. The minimum lot size for this proposal is 10,500 square feet. The variance being proposed for this parcel would be a side yard variance of 5' on the left side of the proposed building. Please note that the current structure on this parcel is a multi-family dwelling with a five-foot side yard setback, on the same side as being proposed.

J. Wood described Parcel #53 now contains 15,971.26 square feet. The applicant is proposing to build an 11-unit apartment, all 2-bedroom units. The minimum lot size is 10,450 square feet. The proposed variance encompasses a rear yard variance of 15' (building within 10' of the property line), a side yard variance on the northern side of the property of 5', and a side yard variance from 5-10' on the opposite side of the building. Preliminary reviews by the Engineering Department suggest that it would be

difficult, but not impossible, to build within the required setbacks. However, it was stated that it would be very costly and the applicant would take the risk on damaging the adjoining structures due to the topography of the parcel.

J. Wood advised that both parcels exceed the minimum lot requirement for what the applicant is proposing. A copy of the *Table 2, Residential Development Standards* is included in your packet so you may see the breakdown for M-U, Mixed Use District and multi-family structures. The site plan will undergo Technical Review on April 27, 2005, with the Planning Department, Engineering and the Morgantown Utility Board.

J. Wood submitted the staff recommendation as follows:

Finding #1: Staff believes the BZA should find in the positive due to the topography of parcel #53.

Finding #2: Staff believes the BZA should find in the positive because the applicant has stated and provided pictures of numerous structures with setback deficiencies.

Finding #3: Staff believes the BZA should find in the positive, but should be changed to add that a dilapidated building will be razed and a new structure put in place that will enhance the area and increase property values.

Finding #4: Staff believes the BZA should find in the positive due to the fact that the area is zoned for multi-family residential and will allow for usage of parcels that have topographic challenges.

K. Leyden asked for clarification of the map.

B. Bossio asked if the building being razed included the garage or shed indicated.

J. Wood replied yes, it would be razed.

Mike Williams, applicant, was available for any questions and added that another difficulty was a large water/sewer line running through the middle of the property. Because of having to straddle this line, he has to have two buildings instead of one.

B. Bossio asked how the topography would affect the parking.

Mr. Williams responded that 36 spaces would be required and he has planned 38. The 11-unit structure will have parking underneath but things are still in flux.

J. Rockis questioned if Mr. Williams was a builder.

Mr. Williams replied that he is not a builder and he hires it all out. Currently he is building an apartment building on Beverly Avenue.

J. Rockis warned that there are several things that he sees that you cannot do; including backing out into Third Street.

Mr. Williams has discussed this with the City Engineer and they will have reverse parking, which is back in parking.

B. Bossio asked for clarification of what the City Engineer said.

Mr. Williams replied that they can back into the parking spaces and go out forward. If this is the only concern, he can rearrange the parking structure.

J. Rockis objected to the lack of landscape plans.

Mr. Williams understood that he did not have to submit a site plan at this point.

J. Rockis remarked that in order for me to see what you want to do with these variances, I need to see allowances for landscaping; there are one to three problem places of a clear corner vision triangle; the alley is 15' wide, when you back out of a parking stall, you need at least a 20' backing place.

Mr. Williams stated that there are other properties, right now, that back right into the alleyway.

K. Leyden suggested that it is lot of cars in a small area and needs to be thought through completely.

Mr. Williams replied that is why it is in Alpha Associates' lap, to make sure everything is taken care of properly.

J. Rockis commented that he can't support this with what has been turned in.

Mr. Williams responded that, from my standpoint, I want variances before paying the engineering company. My understanding is that I go before the Planning Commission with the site plan to take care of all these issues.

J. Rockis asked how do we know the building will fit on the property and that you will be able to supply the necessary parking on that specific site.

Mr. Williams said that he understood that he did not need a completed site plan for variance approval. He has been working with Triad as to where the building sits, where we can cut into the hill and all that stuff. I'm not going to have an architectural plan drawn up if I'm not going to get the variances.

J. Rockis noted that this area is targeted for high intensity development brought about by the Sunnyside Up group workmanlike manner, all the mechanical details such as parking, stormwater runoff, landscaping, greenspace and all that has to be in there.

Mr. Williams answered that I understand the harmony, have gone through the process on the Beverly Avenue site and do know all the requirements. I do not intend to get around any of the requirements.

B. Bossio asked why this was before them without all the information on there.

J. Wood responded that typically on a variance request, they are asked to provide relief for a setback requirement. Some may argue that landscaping being provided is not relevant to whether or not a setback is warranted. If it was a conditional use, that level of detail is warranted. Conditional use is a project that gets an additional scrutiny and an extra level of review in front of this board.

B. Bossio asked if this will come before the board again at a later stage.

J. Wood replied that will go before the plans review team so you won't see the final site plans.

K. Leyden said that they have the Findings of Fact in front of us to approve that clearly indicate we need additional information. He read and discussed #4.

J. Wood responded that this has not been approved; he has to provide a different level of information for the plans review team. The simple sketch diagram is to support his case for the variance. If the Board feels it can't make an intelligent decision about the variance without that additional information, then the alternative is to table it until the information is provided. Mr. Wood couldn't recall when that level of detail for a simple setback variance was required.

K. Leyden asked if the Planning Commission would review the site plan.

J. Wood answered that it will be reviewed in-house because it falls under the threshold. The plans review team is the Planning and Engineering Departments, Morgantown Utility Board and sometimes the Fire Department.

B. Bossio asked for reverse parking clarification and if it is something new.

Mr. Williams replied that Terry Hough had to explain it to him.

J. Rockis said that it is contrary to what the zoning ordinance says.

Mr. Williams thinks there is enough room on the site to adjust as there are only four spaces there.

B. Bossio confirmed that this is a setback variance, not a conditional use, and asked if all these problems should be caught by the plans review committee.

J. Wood the plans review team is going to address those issues in their review. Those reviews happen every two weeks.

K. Leyden questioned why this comes to us first.

J. Wood replied that it is all for naught without the variances.

J. Rockis questioned how you can rule on a setback requirement without knowing what is going to be there or maybe changed around in-house.

Mr. Williams said that he thought this proceeding was mutually exclusive of the addressing of the plans review team.

J. Wood responded that the team cannot approve without the variances so we can give tentative approval conditional on getting the variances but for the plans review team, it has to meet everything in the ordinance or it doesn't get approved.

M. Furfari asked if the Board discusses going up (height).

J. Wood replied that it is a permitted height for that district.

M. Furfari questioned if there is a structure on #53 right now.

J. Wood replied no, but there is a high wall along McLane.

Mr. Williams submitted that Triad is core drilling to plan minimal disturbance of the hill. The only way is to come as close to the alley as you can.

J. Wood noted that parking stalls 9 through 33 are 10' back from the front property line so they have an effective 25' backing area. Dr. Eck, WVU Transportation Engineer, told the City about the reverse parking concept many communities are now using. It seems to work pretty well especially with reverse angle parking; studies are showing it to be a safer turning movement. He questioned the enforcement of the tenants backing in.

Mr. Williams stated that, in the lease, it says they would have to back in or be towed.

J. Wood clarified that setbacks are established to provide a building envelope or a possible narrowing of the lot. It is a portion of the lot that we consider to be buildable. He is asking for the building envelope to be altered in ways that give a little relief from the normal requirements due to the presence of the sewer line, the topography, and some of the engineering considerations that were mentioned. We looked at adjusting the building envelope, adjusting where it is possible to build on the property. Given that, does that analysis require landscaping details?

K. Leyden asked for public comments. There being none, the public portion was closed.

J. Rockis reiterated that there are several things that go contrary to the zoning ordinance but it is a difficult lot to work on. K. Leyden agreed.

K. Leyden asked the Board to classify what information they wanted.

J. Rockis listed a site plan with scale and with parking, a three-foot zone for landscaping, and topographical maps for the roadway and walls. He added that the City would need to improve the alley.

Motion to table the request until additional information is provided by B. Bossio, second by M. Furfari. Motion carried unanimously.

3. **BA05-01 / Post / 420 Brockway Avenue:** Administrative appeal filed by William Post to appeal a decision made by the Planning Director concerning §20.F, Nonconforming Use Specifications, for property located at 420 Brockway Avenue. Tax Map #29 Parcel #307; an R-1A, Single-family Residential District.

J. Wood read the staff report stating that Mr. William Post has a 3-unit apartment building at 420 Brockway Avenue. The rental compliance history indicates that in 1980, the ground-floor apartment #1 had grandfathered occupancy for 4 persons. Mr. Post then embarked on a series of partially legal, and partially illegal renovations to the structure' starting in approximately 2002. He obtained permits for minor work involving new electric meters, side porches, relocating of entrances, and new siding. The work performed, however, went far beyond what was stated in the permits, and included erecting a new roof on the structure which made it considerably taller, rebuilding a single story front porch into

a two-level porch, the top level of which was enclosed and made into an illegal bedroom; and interior modifications that had the effect of turning the building into a 6 unit apartment, each with its own kitchen. These renovations took place roughly between 2002 and today.

J. Wood stated that Mr. Post was informed that he would have to resolve the problem by turning the building back into a 3-unit structure. During a meeting with myself, Mike Stone and Max Humphreys of the Fire Department, the issue of the grandfathered occupancy of unit #1 came up in conversation. Mr. Post inquired as to whether we would continue to grandfather unit #1 for four persons. We asked him how long the unit had sat vacant during the renovations mentioned above. He stated that it had sat vacant for at least 18 months. We informed him that grandfathered status was therefore lost on unit #1 and that he would have to revert back to 3-person occupancy for the unit.

J. Wood reported that, a few days later, Mr. Post called and stated that he had been mistaken about the 18-month vacancy and that, in fact, it was 11 months instead. I asked him to provide documentation to that effect through rent receipts, copies of leases, etc. back to the last time the unit had a valid letter of compliance. The information Mr. Post submitted appeared, at the time, to support the claim, so I wrote a memorandum to that effect to Mike Stone and Max Humphreys, asking them to respond if they had information to contradict the claims.

Mike Stone reviewed the information and found it to be insufficient proof. Specifically, some of the financial records (rent receipts, etc.) were not tied to a specific unit in the building. In addition, the building had been recently occupied illegally, due to it not having a valid certificate of occupancy and due to illegal conversion activity in the structure. Illegal occupancy cannot be used as a basis to retain grandfathered status.

J. Wood said that further, in April 1992, the letter of compliance issued for the three apartments had a note written on it by an inspector that said "total = 5 persons in the three apartments per Mr. Post, 4/15/92. This seems to indicate that grandfathered status for four occupancy had been voluntarily given up by the applicant as early as 1992. We have no information from 1992 until renovations began to indicate whether that occupancy was re-established for 4, so there is some cloud hanging over whether there had been a continuous occupancy. It is important to remember that the burden of proof is on the applicant to show that grandfathered status for nonconforming occupancy has been retained.

J. Wood reported that Mr. Post also tried to claim that certain construction workers who were performing some of the modifications between 2002 and 2004 had stayed temporarily in the unit, and thus should be considered to have had "tenant" status. The proof burden required in this case is for Mr. Post to show that he had four, legal tenants in apartment #1, for each year 2002, 2003, and 2004. The typical standard of proof we ask for is to show that for any two months in each year, each bedroom was occupied.

J. Wood advised that based on the objections of Mike Stone, I made a ruling that sufficient proof was not provided and thus ordered that unit #1 be reduced to three occupancy. Mr. Post is appealing my decision and is asking the BZA to rule that the evidence is sufficient to justify retention of the grandfathered status for four occupancy. Copies of the information Mr. Post submitted are included in your packet. Mike Stone is here to answer any questions and I ask that you call on him, as part of staff, after my report.

Mike Stone, Code Enforcement Chief, stated that going through the folders and the rent receipts and bank statements that Mr. Post provided, he questioned a few things. On February 8, 2001, the property was before the Board to be rezoned to R-3 and to do some more development over there. There was a June 2000 request to rezone from R-3 to multi-family that was denied.

Mr. Stone said the pictures with the application show an open porch on the front and dormers on top. Our recent pictures are now showing the open porch is now two-stories enclosed with a bedroom. The dormers are removed and the roof raised to make the top floor into a larger apartment. These and the staff report set off red flags saying, "I didn't get what I wanted so I'm going to do it anyhow." Permits were issued to Mr. Post to repair and replace the roof. It did not say remove the roof and remove the dormers. He got a permit to enclose the front porch, however, there was no information saying he was going to put on a second floor on the porch. From all of this there was never any construction documents issued to our department for review or anything of that nature. This is commercial space. Had we known the scope of this work, like any other contractor in the City, he would have been requested to provide architectural or engineered drawings for review. We have none; it never happened. Permits were issued, in part, on Mr. Post's word of what was going to happen. George Fanok, now deceased, used to be the inspector for that area and put stop work orders on that building for work exceeding the permit.

Mr. Stone reported that on 5/21/99, Gene Raymond, no longer working for the city, did an inspection showing three units in the building. The issued letter of compliance expired 5/21/04. Some recent pictures of the unit the way it is now say Apartment 2 left. Bonita Forbes, Housing Inspector, obtained information that shows a lease that says apartment parking side, apartment parking left side on the same floor, which indicates two units on each floor. Mr. Post was issued a citation on January 19, 2005, for an unlawful structure with maximum occupancy. He appeared in court on February 8, 2005, pled "Not Guilty", and was fined \$125.00.

Mr. Stone indicated a memorandum from Jim Wood showing lease terms of 8/31/03 to 8/1/04. However, Mr. Post's letter of compliance expired 5/21/04. Several letters were sent by the City for him to register his rental property on 4/19/04, 4/22/04, 10/6/04, and 10/22/04. A registered letter was sent on 10/31/04 so he would come in and register his property which had expired 5/21/04. Evidently, he did come in and register on 10/20/04.

Mr. Stone explained that the building was under construction for a long time. There was no certificate of occupancy and there was no letter of compliance for this property. In the original Housing Code, Administrative section, *"It shall be illegal for any person or persons to occupy, rent, or offer to rent any apartment which does not have a written application for a letter of compliance. A dwelling unit is a single unit providing complete and independent living facilities for one or more persons including permanent provisions for living, eating, sleeping, cooking, and sanitation."* When Mr. Post was issued a citation in January, our inspectors found six apartments there. They found two on each floor instead of one. Mr. Post put in kitchens and bathrooms on each floor, a dividing wall and door between the apartments with entrances to each apartment from the outside. The center doors can be locked. You have six apartments according to the original Housing Code, Administrative section, and the ICC building code.

Mr. Stone argued that there were no permits issued to install kitchens or bathrooms on any of those floors. We request that those kitchens and dividing walls be removed and it be converted back into

three single units. I feel that when he started construction, and with all the other things going on, he lost his grandfather clause. I don't feel he should be allowed to have it back.

K. Leyden asked how many tenants were allowed in the entire dwelling before the renovations started.

Mike Stone replied ten. The code allows for three unrelated people on each floor but the bottom floor had a non-conforming occupancy for four.

B. Bossio asked how many are allowed now.

Mr. Stone answered that with six apartments with three unrelated in each if it meets the square footage, 18 total.

B. Bossio questioned if permits were issued for parking.

Mr. Stone responded that permits were issued to repair the roof (no mention of raising the roof and removing the dormers). Permit issued for siding, electrical work, windows, foundation work, enclose front porch (no mention of raising the front porch another story and putting in another bedroom). No permits were issued, or noted anywhere in the file, for three extra kitchens, three extra bathrooms, three dividing walls to divide each floor into two apartments.

J. Wood clarified that the City's position is that , before the renovations began, he was allowed to have ten occupants. Now he is allowed to have nine. The three additional apartments are not legal.

M. Furfari asked when the stop work order occurred, did work stop.

Mr. Stone replied that he was not sure, George was handling that side of town. I am assuming that it did. I did not go into the apartments. That is why I asked Bonita Forbes to be here. Bonita, Carl and Max from the Fire Department, all three agreed they were divided into apartments.

B. Bossio clarified that the issue at hand is whether nine or ten people can live there.

J. Wood answered that is the issue being appealed. The three extra kitchens, bathrooms, and wall division will be handled outside of this body. What is being appealed is my decision that he can have no more than nine people, total, in the building.

B. Bossio asked, for the record, does the City intend to have these kitchens removed, the second floor roof removed and brought down to what he was permitted to do?

Mr. Stone stated that Mr. Post sent a letter asking what would be required to receive a certificate of occupancy for the structure.

J. Wood noted Mike Stone's letter in reply, on page 41 of the packet, asking him to remove the kitchens and dividing walls.

Mike Stone responded that he is also asking for either a structural engineer's report showing the work that was done would hold the imposed loads that were put upon the building or, alternatively, that he can meet Section 34.34.02.2 of the ICC. Mr. Post is evidently going to appeal that to the ICC Board

of Appeals and is also appealing Section 2.02 of the IMPC Code (definition of apartment). He is going to appeal the sprinkler system, the stairway, virtually appeal everything I put in the letter.

B. Bossio asked for clarification about is not asking him to pay for the proper permits for the scope of the work that was done so the state tax department can pick it up for the improvements on his property.

Mr. Stone replied that Mr. Post was not aware of it yet but that is part of it. In fact, I had an asbestos contractor in today to do exactly that. He had a job in Morgantown without the benefits of permits or a City license. He was under the threat of citations and fines. He came in and got a building permit and paid the fees. So we will go and get that.

B. Bossio said that should hold true any place in the city where somebody did not get a permit for the scope of work. That should be enforced throughout the city.

Mr. Stone answered that is correct.

M. Furfari asked if the building was occupied right now.

Mr. Stone replied that it is. At the meeting that Mr. Post, Mr. Humphreys, Jim Wood and I attended, I believe it was in January, we told Mr. Post to leave the building alone, leave it occupied the way it is until the end of the lease. We didn't want to harm his tenants; they had nothing to do with it. However, at the end of the lease, he was required to convert it back to three units and Max Humphreys had some state fire codes that had to prevail at that time.

M. Furfari asked for confirmation that the leases are up in May.

Mr. Stone replied yes.

William Post, applicant, asked Mike Stone if October of 2004 was the beginning of the illegal occupancy.

Mr. Stone responded it was from August of 2004 until now.

Mr. Post stated his first building permit was for \$40,000. I have appealed all the building permits and what was done but these are building code issues. In my opinion, my recently hired consultant feels it is a misinterpretation of the codes. I am trying to get it straightened out as a separate issue. Why I'm here tonight is the first floor was allowed four people by the grandfather clause and I am trying to maintain that for the first floor. We had a meeting in January. During the meeting, I was early. Mike Stone, Max Humphreys and Jim Wood showed up. They all met in Jim Wood's office; closed the door and talked for a while, and then they invited me in. The first question was when was the last time the building had been occupied. I told them about a year and a half ago. As we went on with the meeting, they asked what would you do to comply with what is going on. I tried to address all the other issues. I brought up the grandfather clause again because I didn't want to lose my grandfather clause. They said, yes, if it has been more than a year then you have to lose your grandfather clause. Mr. Post noted that driving home, I called Mr. Wood because I realized this past spring of 2004, several of the workers from Clarksburg stayed in the building to save gas money. I asked Mr. Wood

if that was satisfactory but he said no, it needed to be a lease situation where the people were there for a longer period of time. I didn't know specifically.

Mr. Post declared the meeting was in January. The last time the apartment was occupied was August of 2003. I brought the information to Mr. Wood: rental receipts and actual leases. He told me that he had sent memos to Max Humphreys and Mike Stone. During the memos, Mike Stone wasn't satisfied with the information. I don't know if there was any response from Max Humphreys. He wanted rent receipts for two months of each year showing the people being in there, every single year, for 2002, 2003 and 2004. I gave him that information. Then Mike Stone said what the problem is now is that it was illegal occupancy until I came in, in October 2004, and filled out the application for occupancy. According to your department, at that point, it has been 13 months since it was last occupied. So even though they were there in August, it did not count for the year. I'd like to show you two memos: January 27, 2005 and February 10, 2005. I did want to mention one other thing; the long lag before Mike Stone responded. When I went to appeal this, I had waited a month so we could get this resolved. Mike just responded so I brought in the information. I would bring it to Jim and there was a delay. I called him several times for his decision. Jim said there would probably be a favorable decision; he was just waiting to hear back from Max Humphreys and Mike Stone. Mike would not respond for a long period of time. When he would respond, he would request more information every time. In response to the inter-city memo, the bottom paragraphs in both of them, Mike submitted that there should be no loss of status.

J. Wood interjected that the memos are in the packets.

Mr. Post stated that when I found out about the appeal, I approached Mike and Jim and tried to get all the information you have at the City to determine your rental status, created status and what you are allowed to keep. I was surprised, when I asked; Jim gave me your Rental Housing Registration Criteria. I don't mean to jump back, but I actually applied in July 2004, for a temporary occupancy for the first apartment, which he is declaring illegal. The memo from Max Humphreys to Mike Stone, but in Max Humphreys' memo, he addressed that the building should be condemned because I didn't have a temporary certificate of occupancy for the second floor, which was on his desk, ready to sign, which was why he knew I didn't have it. I applied for that back in August, before the people moved in for the second floor. I previously applied for these in July, which Code Enforcement has no record of. In Max Humphreys' memo to Mike Stone, he states that I came before his office and asked for permission to make sure I didn't violate any fire code issues. In that memo, he knows that I have already attempted to do what is necessary to be legal in the City of Morgantown. Back to the issue of the rental registration criteria for proof of grandfathering, he read, *you must show that the use was established prior to 1959, the adoption of the City's zoning ordinance and continues to the present time. Proof may be in the form of rent receipts, B&O tax, and notarized affidavits from the adjacent property owners certifying that the property was used as such.* I have the adjacent property owner's, Vic Solomon's signed affidavit. With the letter of compliance to May 2004, I was still legal to have people living there. (The affidavit and letter of compliance were presented to the Chair.) When I looked at my records of rent receipts for when my workers lived there, it was 2004. Placing drywall for the second and third floors, they had stayed there for two months and I have affidavits from them. In 2004, also the present people. The lease states that signing people agree this is one apartment and have the option of leaving the door open and using it as a common door. There are four leases for the present first floor tenants and I have the deposit slips and a copy of their checks.

B. Bossio noted that the four affidavits stated they paid \$25 a month rent.

Mr. Post replied that the place was under construction.

K. Leyden asked if it was legal for them to be there.

Mr. Post responded yes; they had a kitchen area, a bathroom area.

B. Bossio asked if the letter of compliance was for three people or for four people.

Mr. Post stated the letter of compliance is for the three apartments in the whole building.

B. Bossio this is for the four individuals that stayed in apartment 1 to prove that you had four people living there..

Mr. Post answered it is part of the proof; I have the people living there now, all 2004.

J. Wood reiterated they are only talking about unit 1, not the second or third floors. Some of the leases you gave me show Sandra Seneta, Lauren Belcastro, Shiang-huei Jiang, and Shu Yuan Ku in 2004. Was this the same time the construction workers were there?

Mr. Post replied no; they were getting the first floor ready for this semester, the fall. I went in to apply for a temporary certificate of occupancy in July because the construction was coming to an end and for getting the place ready for people to move in. I needed a temporary certificate of occupancy because the third floor wasn't ready and I understood I needed a temporary certificate as I move people in the different floors.

J. Wood asked if, while the construction workers were staying there, did you have a certificate of occupancy for the first floor.

Mr. Post answered yes; it's the green one that you are passing around.

B. Bossio said that it is a letter of compliance.

Mr. Post replied that I thought that's what that is.

B. Bossio clarified that they are talking about two different things: an occupancy permit and a letter of compliance.

Mr. Post said he thought the letter of compliance is what your proof is.

B. Bossio explained this is a letter of compliance for occupancy in that it meets all the codes to have an apartment. There is also a certificate of occupancy. During any type of major renovation or new construction or change for a business, you must have a letter of occupancy. Did you have a letter of occupancy?

Mr. Post replied that I have to look through my records to see if I have something other than that.

B. Bossio asked Mike Stone if a letter of occupancy was issued.

Mr. Stone replied (but not at the microphone).

B. Bossio reiterated that no one has ever inspected it to see if it is clear to live in or to occupy and asked Mr. Wood the date for the four names he read.

J. Wood replied it is on page 42.

Mr. Post said it was earlier in the year; the guys working for me were March and April.

J. Wood noted that earlier you said August of 2003 was the last occupancy except for the construction workers.

Mr. Post responded that during the cell phone call; you said it wasn't applicable since it wasn't long enough.

J. Wood answered that 15 or 20 minutes ago, you said August, 2003 was the

Mr. Post interrupted with I was referring to what was said at the January meeting.

J. Wood replied that you said August 2003 but you didn't remember you had four current people in there.

Mr. Post replied that just as you stressed, I was doing those guys a favor so they didn't have to pay for gas. I didn't need it as a proof of anything.

J. Wood responded that I'm talking about Seneta, Belcastro, Jiang, and Ku. According to your records, they came in August of 2004. If they came in that recently, how did you not remember?

Mr. Post said that I brought that up at the meeting.

J. Wood argued that a few minutes ago, you said August of 2003.

Mr. Post replied that at the meeting, you asked me the last time it was occupied before the people in there now. The same people from August 2004 are the same people there today. They were there when Bonita did the inspection. The only reason I brought up the four people that worked for me and stayed there is that Mike Stone said it was illegal till October when I filled out the temporary certificate of occupancy for the second floor. I thought he said October, now he is saying the whole year is illegitimate.

B. Bossio asked do you understand now there are

Mr. Post interrupted with I understand; I bet I have one. Do they give that to you every three years or how often?

B. Bossio stated this is a letter of compliance for a rental unit. You also need a certificate of occupancy before anyone can move in or stay in any place that has had any type of renovations. Mr. Post said I understand where you are going with that. The last floor we renovated was the 4-bedroom first floor.

K. Leyden noted that because some construction workers stayed there; I'm not sure what stayed there means.

Mike Stone replied (off microphone).

Mr. Post replied that he never had any problem in the past.

Mike Stone replied (off microphone).

Mr. Post answered why I did it in the order it was done, the first floor was at the end.

J. Wood stated that your claim is between regular tenants, there was an 11-month gap with construction workers in the gap.

Mr. Post declared that August 31, 2003, and August 1, 2004, (away from microphone).

K. Leyden asked for clarification of the grandfather clause for the first floor.

Mr. Post replied it was for four occupants on the first floor.

J. Wood clarified that if you have an apartment building with 20 apartments, it is 20 dwelling units. A single-family home is also a dwelling unit. The law says that three people in a dwelling unit but this particular dwelling unit (bottom floor of a multi-dwelling) was originally grandfathered for four persons on the first floor. So we asked him to prove that he maintained that and there were no 12-month gaps.

K. Leyden asked how many are on the first floor now.

Mr. Post replied four.

J. Wood said that our contention is there was a gap but even if there wasn't a gap, some of that occupancy period the building was occupied illegally and you cannot use illegal occupancy to establish grandfathering.

Mr. Post asked if you are familiar with the rental Housing Registration Criteria where it asks for the three different kinds of proof. I also have here B&O tax (left microphone).

J. Rockis said as for as putting the wall

Mr. Post interrupted with that wall is a bearing wall and has never been changed. That's why I'm appealing. I spoke to Rich Lane about changing the zoning. It didn't work out; what can you do? I asked about two kitchens for four people and he said you can have as many kitchens as you want. The bearing wall was a hallway; it was just an opening.

J. Rockis asked about changing the roof.

Mr. Post said it is 4' lower than the original roof. It was water damaged and the guy said it needed four walls and a regular roof. I wanted to work on the top floor first and not lose rent from the other floors.

J. Rockis asked how about the porch and all that.

Mr. Post replied it is all being appealed. The first permit was for \$40,00. Some call it minor work; I consider \$40,000 a lot of work.

J. Rockis noted that you don't think you've done anything wrong.

Mr. Post responded I tried to do something to make the building nicer and the City has, not the City as a whole, Jim and I had no problem, never really talked to Mike until this January. When they talk about permits and closing me down the first time, the stop work order was for excavation, the footers were all messed up. The second was because they didn't remember there was a third floor on the building but the first permit says to remove the roof.

J. Rockis said that trying to figure out if you're lying to us is why I asked you those questions. You want us to believe all this stuff you have here. There are so many gross misrepresentations of what you were supposed to do and what you did. When you get to the zoning ordinance, what you have done is make structural alterations to a nonconforming use, to nonconforming occupancy, and to a nonconforming structure. You have pretty much run the gamut of everything you are not supposed to do, you did.

Mr. Post replied that my understanding, talking to Rich Lane, the wall he is talking about removing is a bearing wall. I thought I was working in the scope of what I was allowed to do. As a matter of fact, George Fanok saw what was being put in. I had Jim Gatian come in May 2004 and do final inspection on all three floors. I wasn't trying to hide anything.

J. Rockis answered that, in my opinion, I think they're giving you a gift. If I were you, I'd sit down and say thank you, sir, and do what he says.

Mr. Post said that I understand about the other, no problem with that, and I was not aware of all the different laws and everything; that's why I had to have a consultant. I don't do this everyday.

J. Rockis asked what kind of work do you do?

Mr., Post said he was a metal fabricator before this.

J. Wood asked if he owned the building in 1990.

Mr. Post replied no, it was probably my brother Charles.

J. Wood noted that in 1992, there were five people total in the apartments. How long was this?

Mr. Post responded that his father passed away in 1991. No one really did anything with the apartments, but according to my brother, there were four guys on the first floor and one on the top floor in 1992. I didn't understand the citation for unlawful structure until before the judge, what was

considered unlawful. My understanding is the only necessary thing that needs to be done to the building is make sure there are no locks on the metal doors. There is only one electrical meter and one mailbox for each apartment. I don't understand why you are so aggressively going after this.

J. Rockis said that there has to be some semblance of order in doing construction work and in the rental business because what you wind up with is a bunch of junk like over there where you have been working. It is totally unacceptable what you did. You basically circumvented the zoning laws. I've been on this Board for almost 20 years. You take the cake. I have never seen anything like this. This is the first time the Chief Building Inspector has been here to make sure, to explain what you have done. It's incredible.

Mr. Post said the he requested that someone be here from the Code Enforcement office. I tried to do what I thought was allowed by law. I recently hired a consultant and as far as he is concerned, I think I've done what

B. Bossio interrupted with where is your consultant this evening.

Mr. Post replied that this is a going issue and we are concerned about the four bedrooms. Other things will be taken up at a later date for the appeal.

K. Leyden asked if there were no citations at all during the period you were building.

Mr. Post answered there were stop work orders.

K. Leyden suggested that wouldn't that raise the question that you were doing something illegal.

Mr. Post responded that the very same day they gave the citation on the third floor, we went over and they gave me a building permit for the walls to put the third floor on.

K. Leyden said that something doesn't add up here.

Mr. Post replied that you can look up the dates, but the main issue is the four bedrooms. These other issues will be addressed by your Board for the other.

J. Wood asked do you know what the finished height of your roof peak is, above grade.

Mr. Post replied that his guess was about 32'.

B. Bossio asked Mike Stone if he had a certificate of occupancy for the term after the renovations had been completed or during any type of renovations.

Mike Stone answered that there has been no certificate of occupancy issued for the building yet. There will not be a certificate of occupancy issued for the building until I get something from a structural engineer saying that the renovations that were done meet code.

B. Bossio asked if any occupancy of the first floor would be an illegal occupancy.

Mike Stone replied that's correct.

M. Furfari questioned are there six apartments. It looks like six entrance doors.

Mr. Post responded the original entrances are on both sides. The staircases from the second floor to the third floor were internal. The Fire Marshall required so much stuff we put them to the exterior.

K. Leyden remarked that it did not have six entrances to the outside before.

Mr. Post replied that yes, it did. In 1997, my brother got permits to move two doors to the parking lot side and put on the original deck. I put another piece to get to the third floor. On the other side, there was a deck.

M. Furfari said so there are now six apartments in a building that, prior to this, was a 3-unit.

J. Wood defined that our interpretation is that the building has been divided into six units illegally. It was grandfathered for three.

M. Furfari asserted that the fact that there are six units, it should never have happened.

J. Wood agreed.

M. Furfari declared that I've been going down Brockway Avenue since I was a kid. My grandmother's home is on Brockway and this is completely inconsistent with the homes on Brockway. My guess is that if you had gone through the proper procedures, you wouldn't have done what you did.

J. Wood explained that another issue is for a nonconforming structure, which if you have a triplex in an R-1 zoning district, a nonconforming structure cannot be enlarged in such a way that requires structural alterations.

J. Rockis asked for the reasoning in having a nonconforming structure in a zoning district.

J. Wood answered the nonconforming status allows the property owner to recoup their investment and to continue using it, but if they ever abandon it for a 12-month period, they lose that status and the next thing that comes along on that property conforms with the zoning ordinance.

J. Rockis summarized that the idea is to phase out the uses in specific zones that you want to eliminate.

J. Wood noted, based on the photographs, it appears as if there are four electric meters on the building.

Mr. Post replied yes, at the time I approached George Fanok to put the meters in, he told me I needed a house meter for the interconnected fire alarms. When Jim Gatian took over, he asked why. Every time the City asked me to do something, I did what they asked me to do. The Code Enforcement people were there all the time.

J. Wood observed that on another photograph showing the mailboxes, the four mailboxes are labeled Apartment 1 right, Apartment 1 left, Apartment 2 left, Apartment 2 right.

Mr. Post reported that as a result of tenants heard and added the other mailbox. It is not there now. The other mailbox has been removed.

M. Furfari asked that you put in enough basic kitchens and baths for six units, is that correct?

Mr. Post claimed that I don't consider it six units. The reason they were considering it six units was because

M. Furfari interrupted with are there six bathrooms?

Mr. Post replied yes.

M. Furfari asked six kitchens?

Mr. Post responded yes, no, that's not exactly correct. On the third floor, when I originally approached the Planning Department with Rich Lane, he told me I was only allowed two people on top. I just found out through Jim Wood, at the meeting, that I was allowed to have three people. I thought I was grandfathered at the top for only two.

J. Wood replied that was not a zoning issue but a code issue.

Mr. Post said that the third floor, going to get a permit the kitchens are not in yet. Not going to put in the other kitchen. The only floors occupied are the first two.

M. Furfari that's why there's only four mailboxes now.

Mr. Post clarified there weren't four mailboxes prior to our meeting in January. The girl on another floor put that mailbox up and now its back to three.

J. Wood questioned if you don't consider them separate apartments, why did you call them Apartment 1 left and Apartment 1 right?

Mr. Post responded that they decided to designate which way they would come in and go out of primarily if they kept their door closed between them.

M. Furfari said these apartments have both a front door and rear door.

Mr. Post replied yes.

K. Leyden asked for public comments.

Frank Ferrell, 26 Outlook Street, said that I sat and listened to this discussion. I was a member of the Board for a few years and remember a similar case to this. A stop work order was given to a nonconforming use being used as a garage. The gentleman expanded the nonconforming use, but he asked permission to finish it and he would appeal it to the Board of Zoning Appeals. If the BZA rejected the appeal, he would tear down the work done to enlarge the building. We took him at his word, the Board turned him down. The case went to court and was resolved in a manner that benefited the City and the owner. The Board was steadfast in their position. You are considering the

occupancy here of the first floor. Any time a structure is enlarged in a nonconforming area, this is not permitted. You can ask that it be removed. Any enlargement of the structure, by putting on an additional porch, by raising the roof. The Clover Farm building on Richwood put a roof on and extended the height of the building and the City forced them to take it off of there. Any violation of the zoning ordinance, for people to think the Board doesn't have any power. He read from Remedies and Penalties in the Zoning Ordinance, *"The Commission or the Board may also institute a suit for mandatory injunction directing any individual, a corporation, or governmental unit to remove a structure erected in violation of provisions of this ordinance. Any provisions of this ordinance that are violated in Part A, Section 26. The Commission, the Board, the City Manager or any designated enforcement official, or any person, firm, or corporation may institute a suit for injunction to restrain any individual or governmental unit from violating the provisions of this ordinance."* And definitely, provisions of this ordinance have been violated.

K. Leyden asked for further public comments. There being none, the public portion was closed.

K. Leyden stated that the question is whether Mr. Post will be permitted to maintain his grandfather status. We are to decide whether Mr. Post proved his case that he had legal tenants in place in Apartment 1 for an entire year; that there was no period in which Apartment 1 was vacant for one year.

B. Bossio made a motion to deny; he has not proved his case. Mr. Stone telling me that he did not have a certificate of occupancy that would have permitted legal occupancy of that unit. Second by J. Rockis. Unanimous vote for grandfather status to be denied.

Mr. Post (off microphone).

J. Wood responded that he will make copies, but the ones that were submitted must stay. Also important to note that any decision of the Board of Zoning Appeals, pro or con, may be appealed to the Circuit Court of Monongalia County within 30 days. Longer than 30 days, you lose the right to appeal.

Mr. Post (off microphone).

OTHER BUSINESS:

Public Comments:

Frank Ferrell, 26 Outlook Street, asked for clarification of the reverse parking terminology. J. Wood replied that it simply means that you are required to back into the stall. Mr. Ferrell believes that what Mr. Williams is proposing will be an improvement in that area. The variances really are minute, but the procedures for reverse parking is changing the zoning ordinance. To adopt this procedure without going through changing the zoning ordinance, parking regulations are being ignored. He had suggested that alley be opened years ago. The Board did a good job tonight.

J. Rockis said there are parking lots with just gravel that need to be hard surfaced and put in landscaping. We need to have a meeting with Terry Hough. Backing into streets is normally not an issue, but what I saw tonight, this is just wrong.

B. Bossio supported what Mr. Rockis said and feels there is inconsistency.

K. Leyden said that as we move toward a higher density in Sunnyside, City Council needs to address some key issues, one of which is the alleys in Sunnyside.

B. Bossio asked about expansion of nonconforming use.

Staff Comments:

J. Wood explained the difference between nonconforming use and nonconforming structure is that, you can have a nonconforming structure with a nonconforming use, and you can enlarge the nonconforming structure as long as the enlargements meet all the requirements. You can't take a portion of the building that is nonconforming and make it more nonconforming by enlarging that portion of the building.

ADJOURNMENT